



Organization of
American States

Inter-American
Commission on
Human Rights **IACHR**

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

OEA/Ser.L/V/II.
Doc. 44
5 December 2013
Original: Spanish

**GUARANTEES FOR THE INDEPENDENCE OF JUSTICE OPERATORS.
TOWARDS STRENGTHENING ACCESS TO JUSTICE AND THE
RULE OF LAW IN THE AMERICAS**

2013

Internet: <http://www.cidh.org>

VII. RECOMMENDATIONS

249. Based on the analysis done in this report, on the information it contains and the conclusions reached in each section and the previous chapter, all with view to strengthening the independence, autonomy and impartiality of the justice operators in the countries of the region,

THE INTER-AMERICAN HUMAN RIGHTS COMMISSION RECOMMENDS THE AMERICAN STATES:

A. On the Independence from other authorities or bodies of the State.

1. Establish on a Constitutional level, in those States where it is still not guaranteed, the separation of powers, consecrating with clarity that the judiciary is independent of the executive and the legislature, and that it is not subordinate to any of these powers.
2. In States where the prosecution depends on the Executive or the Judiciary, to adopt measures to ensure its institutional independence and meanwhile ensure functional independence in managing its budget.
3. In States where the Public Defender is subordinate to the Executive, the Prosecution or the Judiciary, to adopt measures to ensure their institutional independence, while ensuring their functional independence and the management of its budget.
4. Include in their Constitutions or laws guarantees for stable and sufficient resources for the Judiciary, the Attorney General and the Public Defender, enabling it to have stable and sufficient resources to meet independently, appropriately and efficiently to their functions. The Commission recommends that there should be periodic reviews of such amounts based on objective criteria that allow increase it when necessary. The Commission considers that the decisions related to the reduction or increase of the respective budget of the Prosecution, Public Defender or the Judiciary should ensure the participation of such entities.
5. Ensure the provision of financial, technical and human resources sufficient and adequate to ensure that judges, prosecutors and public defenders can effectively perform their respective roles in the access to justice, so that no delays are incurred due to lack of resources. This involves the acquisition of technical equipment to perform all required tests to investigate the facts of cases, and to ensure adequate coverage in the country, so that justice operators have the capacity access areas even in those of extreme poverty.

B. On the selection and appointment processes

6. Establish in its regulatory framework a selection and appointment processes that has the purpose to select and designate justice operators based on merit and professional skills. Such processes should establish objective criteria for selection and appointment to have predictable requirements and procedures for anyone wishing to participate. Furthermore, States must ensure equality and non-discrimination in the access to public functions as adequate representation of gender, ethnic groups and minorities in the Judiciary, the Prosecution and Public Defender. The Commission considers that a merit based selection process providing methods such as exams, allows these institutions to assess objectively and to qualify the professional capacity and the merits of the candidates for office. The Commission recommends that such processes are preferably administered by an independent body on the terms described in Chapter VII of the report. Furthermore, in order to strengthen the independence of the operator of justice that serve on the highest positions within the Judiciary, Prosecution or Public Defense, the Commission believes that hearings or public interviews, properly prepared, in which citizens, non-governmental organizations and other stakeholders have the opportunity to meet the selection criteria, and to challenge the candidates and express their concerns or support.
7. Review and eliminate all rules that could result in a discrimination against those candidates aiming for a position in any of the institutions of Justice, both those that clearly establish discrimination as those that for vagueness or broadness can generate situations of discrimination *de facto*.
8. Adopt legislative measures to ensure the proper appointment of justice operators. This implies ensuring a predefined and sufficient duration to enable operators of justice to have the stability necessary for independence and autonomy with their work.
9. Accurately set periods of appointments or conditions to those justice operators which are subjects to provisional periods, as to guarantee that such the stability of such periods avoiding free removal. The Commission reiterates that the provisional appointment of justice operators should be an exceptional situation.

C. On the Independence in the exercise of functions

10. Adopt legal measures to ensure that the Legislature or the Executive does not have the power to appoint the President of High Courts or appoint Judges comprising the chambers of the courts or tribunals, in order to

ensure that the courts themselves are entitled of such power, in order to strengthen the internal independence of the Judiciary.

11. Establish a mechanism for assigning cases by objective criteria, for example, through assignment by lot, automatic distribution system according an alphabetical order or based on specialization of justice operators. These criteria should be public and be sufficiently determined to avoid manipulations of the assignments of cases.
12. Where systems include the possibility of promotion, establish predictable procedures as objective criteria for the promotion of justice operators considering the merits and professional capacity of such operators.
13. Establish predictable procedures and public criteria for transferring of post or workplace of justice operators. Such procedures should include a space for acknowledging the opinions, needs and special situation of those justice operators involved.
14. Ensure that national legislation comprises appropriate wage bases that allow justice operators to receive salaries accordantly with their responsibilities. The Commission considers that the appropriate compensation for judicial officers helps prevent internal and external pressures.
15. Ensure ongoing training for justice operators. States should ensure that such training is accessible and that the content includes areas related to human rights and treatment of victims, especially those justice operators who are associated with criminal proceedings.
16. Ensure the existence of effective channels of cooperation between prosecutors, judges, public defenders, police officers and other institutions that may be in possession of information relevant to a case, so that this cooperation, access and exchange of technical information may be institutionalized, so they can perform their duties freely and efficiently, ensuring access to justice.
17. Protect justice operators when their lives and personal integrity are at risk, adopting an effective and comprehensive prevention strategy, in order to prevent attacks, assaults and harassment against them. This requires appropriate funding and political support to institutions and programs in charged of such protection.
18. In countries where attacks against justice operators are more systematic and numerous, States must make available all resources necessary and appropriate to prevent any harm to their life and physical integrity, ensuring their impartiality. The Commission considers that specialized protection programs can provide these States to fulfill their obligation to

protect by allowing closer and specific knowledge of the particular situation of the operator at risk and consequently, providing an intervention that is appropriate, specialized, and proportional to the risk.

19. Conduct thorough and independent investigations into the attacks on justice operators, punishing the perpetrators and masterminds of such attacks. The Commission considers it appropriate that States should establish specialized units with the necessary resources and training, as well as specific research protocols, so it may act in a coordinated way and respond with the due diligence that is required.
20. Guarantee the exercise of freedom of expression and association of justice operators by ensuring that disciplinary regimes do not sanction illegitimately such rights in the terms described in this report.

D. On removal from office and disciplinary regime.

21. Ensure the enjoyment of the guarantees of due process in those disciplinary processes brought against justice operators.
22. Ensure the rule of law in disciplinary grounds used to sanction justice operators. In this regard, the conduct that may result in the imposition of disciplinary measures need to be specified in detail, including the seriousness of the offense and the type of disciplinary action to be applied. States should refrain from establishing disciplinary grounds on actions related to the trial or legal test developed by justice operators in their decisions.
23. Ensure that disciplinary procedures provide the possibility of justice operators to adequately prepare a defense of their rights effectively and on conditions of equality
24. Ensure that decisions on disciplinary proceedings are motivated and therefore, include an assessment of the conduct that the justice operator committed on disciplinary grounds, as the development of arguments to analyze the severity of the conduct alleged and proportionality of the sanction.
25. Ensure that the disciplinary proceedings brought against justice operators, have the possibility to appeal the judgment to a superior body, so it may undertake a review of issues of fact and law, ensuring adequate and effective legal remedies.

E. About the organs of government and administration.

26. The Commission considers that, in countries where they do not exist, it would be convenient to create a independent body of government and administration of justice (Prosecution, Public Defender and the Judiciary), which have the functions of the selection, appointment, promotion and transfers and disciplinary measures on justice operators at all levels, in the terms presented by the Commission in this report.